

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No.)
EDWARD SNOWDEN,)
Defendant,)
and)
MACMILLAN PUBLISHERS INC., *et al.*,)
Relief-Defendants.)

)

Exhibit E:

DoD Instruction 5230.09



DoD INSTRUCTION 5230.09

CLEARANCE OF DoD INFORMATION FOR PUBLIC RELEASE

Originating Component: Office of the Chief Management Officer of the Department of Defense

Effective: January 25, 2019

Releasability: Cleared for public release. Available on the Directives Division Website at <http://www.esd.whs.mil/DD/>.

Reissues and Cancels: DoD Directive 5230.09, "Clearance of DoD Information for Public Release," August 22, 2008, as amended

Approved by: Lisa W. Hershman, Acting Chief Management Officer

Purpose: This issuance reissues the 2008 directive as a DoD instruction in accordance with the authority in DoD Directive (DoDD) 5105.82 and the February 1, 2018 Secretary of Defense Memorandum to establish policy and assign responsibilities for the security and policy review process for the clearance of official DoD information proposed for official public release by the DoD and its employee.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

- a. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).
- b. This issuance does not apply for provisions governing review of:
 - (1) Prepared statements, transcripts of testimony, questions for the record, inserts for the record, budget documents, and other material provided to congressional committees that may be included in the published records in accordance with DoD Instruction (DoDI) 5400.04.
 - (2) Information before publication or disclosure by DoD contractors in accordance with DoD 5220.22-M and Volumes 1-4 of DoD Manual (DoDM) 5200.01.
 - (3) Official information in litigation in accordance with DoDD 5405.2.
 - (4) Release of official DoD information to media organizations in accordance with DoDD 5122.05.
 - (5) Release of visual imagery, captured by DoD personnel on personal equipment, to media organizations in accordance with DoDI 5040.02.
 - (6) Release of information requested pursuant to Section 552 of Title 10, United States Code (U.S.C.) (also known as “the Freedom of Information Act”) and Section 552 of Title 10, U.S.C. (also known as “the Privacy Act”).

1.2. POLICY. It is DoD policy that:

- a. Accurate and timely information is made available to the public and the Congress to help with analysis and understanding of defense strategy, defense policy, and national security issues.
- b. Any official DoD information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DoD will undergo a prepublication review before release.
- c. The Office of the Inspector General of the Department of Defense, as an independent and objective component in the DoD, is exempt from the policy review provisions of this issuance. As necessary, information may be submitted for prepublication review before public release.
- d. The public release of official DoD information is limited only as necessary to safeguard information requiring protection in the interest of national security or other legitimate

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governmental interest, as authorized by DoDDs 5122.05, 5205.02E, 5230.25, 5400.07, 5400.11, 5405.2, and 5500.07; DoDIs 5200.01, 5230.24, and 5230.27; Volumes 1-4 of DoDM 5200.01 and DoDM 5400.07; DoD 5400.11-R; DoD 5500.07-R; Chapter I, Subchapter M, Parts 120 through 130 of Title 22, Code of Federal Regulations; Executive Orders 13526 and 13556; and Section 4353 of Title 22, U.S.C.

e. Information released officially is consistent with established national and DoD policies and programs.

f. To ensure a climate of academic freedom and to encourage intellectual expression, DoD personnel who are students or faculty members of an academy, college, university, or DoD school:

(1) Are not required to submit for prepublication review papers or materials prepared in response to academic requirements when they are not intended for release outside the academic institution. However, these individuals remain obligated to ensure their work contains no classified, sensitive or controlled unclassified sources consistent with their nondisclosure agreements.

(2) Will submit materials for prepublication review if they are intended for public release or will be made available in public libraries. Clearance will be granted if classified information is not disclosed, controlled unclassified information is not disclosed, DoD interests are not jeopardized, and the author accurately portrays official policy, even if the author takes issue with that policy.

g. Retired and separated Service members, former DoD employees and contractors, and non-active duty members of the Reserve Components will use the DoD prepublication review process to ensure that information they intend to release to the public does not compromise national security as required by their nondisclosure agreements. Those who forgo the prepublication review process and inadvertently, negligently, or willfully disclose classified information may be subject to an unauthorized disclosure investigation and legal action.

h. DoD personnel, while acting in a private capacity and not in connection with their official duties, may prepare information for public release through non-DoD venues or media. This information must undergo a prepublication review if it meets the criteria in DoDI 5230.29. Such activity must comply with ethical standards in DoDD 5500.07 and DoD 5500.07-R and may not have an adverse effect on duty performance or the authorized functions of the DoD.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR OF ADMINISTRATION OF THE OFFICE OF THE CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE (OCMO). Under the authority, direction, and control of the Chief Management Officer of the Department of Defense and in accordance with DoDD 5105.53, DoDD 5105.82, and the July 11, 2014 and February 1, 2018 Deputy Secretary of Defense memorandums, the Director of Administration of the OCMO acts as the appellate authority for the DoD security and policy review process.

2.2. DIRECTOR, WASHINGTON HEADQUARTERS SERVICES (WHS). Under the authority, direction, and control of the Chief Management Officer of the Department of Defense and through the Director of Administration of the OCMO, the Director, WHS:

- a. Monitors compliance with this issuance.
- b. Develops procedures and reviews guidelines for the security and policy review of information intended for public release in coordination with offices of the OSD Principal Staff Assistants.
- c. Implements the DoD prepublication review process through the Defense Office of Prepublication and Security Review in accordance with DoDD 5110.04.

2.3. DOD COMPONENT HEADS. The DoD Component heads:

- a. Provide prompt guidance and assistance to the Director, WHS, when requested, for the security or policy implications of information proposed for public release.
- b. Establish policies and procedures to implement this issuance in their Components. Designate the DoD Component office and point of contact for implementation of this issuance and provide this information to the Defense Office of Prepublication and Security Review.
- c. Forward official DoD information proposed for public release to the Director, WHS, for review, including a recommendation on the releasability of the information in accordance with DoDI 5230.29.

GLOSSARY

G.1. ACRONYMS.

DoDD	DoD directive
DoDI	DoD instruction
DoDM	DoD manual
OCMO	Office of the Chief Management Officer of the Department of Defense
U.S.C.	United States Code
WHS	Washington Headquarters Services

G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

DoD personnel.

Any DoD civilian officer or employee (including special government employees) of any DoD Component (including any nonappropriated fund activity).

Any individual hired by or for any DoD Component through a contractual arrangement.

Any active duty Regular or Reserve military officer, warrant officer, and active duty enlisted member of the Military Services.

Any Reserve or National Guard member on active duty under orders issued pursuant to Title 10, U.S.C.

Any Reserve or National Guard member performing official duties, including while on inactive duty for training or while earning retirement points, pursuant to Title 10, U.S.C., or while engaged in any activity related to the performance of a federal duty or function.

Any faculty member in a civil service position or hired pursuant to Title 10, U.S.C. and any student (including a cadet or midshipman) of an academy, college, university, or school of the DoD.

Any foreign national working for a DoD Component consistent with labor agreements, international treaties and agreements, and host-country laws.

information. Any communication or representation of knowledge such as facts, data, or opinions in any medium or form.

official DoD information. All information that is in the custody and control of the DoD, relates to information in the custody and control of the DoD, or was acquired by DoD personnel as part of their official duties or because of their official status within DoD.

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prepublication review. The process by which information that is proposed for public release is examined by the Defense Office of Prepublication and Security Review for compliance with established national and DoD policies and to determine whether it contains any classified, export-controlled or other protected information. It is the responsibility of the originating office to ensure that this prepublication review is followed and that clearance is granted prior to the release of the information to the public.

REFERENCES

Code of Federal Regulations, Title 22, Chapter I, Subchapter M, Parts 120 through 130

Deputy Secretary of Defense Memorandum, "Reorganization of the Office of the Deputy Chief Management Officer," July 11, 2014

Deputy Secretary of Defense Memorandum, "Disestablishment of the Deputy Chief Management Officer and Establishment of the Chief Management Officer," February 1, 2018

DoD 5220.22-M, "National Industrial Security Program Operating Manual," February 28, 2006, as amended

DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, as amended

DoD Directive 5105.53, "Director of Administration and Management (DA&M)," February 26, 2008

DoD Directive 5105.82, "Deputy Chief Management Officer (DCMO) of the Department of Defense," October 17, 2008

DoD Directive 5110.04, "Washington Headquarters Services (WHS)," March 27, 2013

DoD Directive 5122.05, "Assistant To the Secretary of Defense for Public Affairs (ATSD(PA)),," August 7, 2017

DoD Directive 5205.02E, "DoD Operations Security (OPSEC) Program," June 20, 2012

DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984, as amended

DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," January 2, 2008

DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014

DoD Directive 5405.2, "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985

DoD Directive 5500.07, "Standards of Conduct," November 29, 2007

DoD Instruction 5040.02, "Visual Information (VI)," October 27, 2011, as amended

DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive Compartmented Information (SCI)," April 21, 2016

DoD Instruction 5230.24, "Distribution Statements on Technical Documents," August 23, 2012, as amended

DoD Instruction 5230.27, "Presentation of DoD-Related Scientific and Technical Papers at Meetings," November 18, 2016, as amended

DoD Instruction 5230.29, "Security and Policy Review of DoD Information for Public Release," August 13, 2014, as amended

DoD Instruction 5400.04, "Provision of Information to Congress," March 17, 2009

DoD Manual 5200.01, Volume 1, "DoD Information Security Program: Overview, Classification, and Declassification," February 24, 2012

DoD Manual 5200.01, Volume 2, "DoD Information Security Program: DoD Information Security Program: Marking Of Classified Information," February 24, 2012, as amended

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DoD Manual 5200.01, Volume 3, “DoD Information Security Program: Protection Of Classified Information,” February 24, 2012, as amended

DoD Manual 5200.01, Volume 4, “DoD Information Security Program: Controlled Unclassified Information (CUI),” February 24, 2012

DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017

Executive Order 13526, “Classified National Security Information,” December 29, 2009

Executive Order 13556, “Controlled Unclassified Information,” November 4, 2010

Secretary of Defense Memorandum, “Disestablishment of the Deputy Chief Management Officer and Establishment of the Chief Management Officer,” February 1, 2018

United States Code, Title 10

United States Code, Title 22, Section 4353